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EXAMINER	
JONES, SCOTT E	
ART UNIT	**PAPER NUMBER**
3713	

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/756,508	NEWDELMAN, MITCHELL J.	
	Examiner	Art Unit	
	Scott E. Jones	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 January 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on April 30, 2004 in which applicant amends claims 1, 9, 13, 16, and 29, amends the specification, submits a terminal disclaimer, and responds to the claim rejections. Claims 1-29 are pending.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 21-25 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Friedman (U.S. 6,457,715).

Friedman discloses a method for playing a card or other type of wagering game on a card table or in an electronic video gaming machine wherein a player places a wager and a dealer

deals two cards to the player. Instead of cards, other indicators selected or dealt from a set of indicators including a plurality of indicators bearing indicia designating a series of ordered rank, such as dice, or numbered tokens may be employed. The player is then afforded the opportunity to inspect the two cards and discard and replace zero, one, or two of the cards. After the discard option, the dealer reveals a third card and resolves the player's wager dependent on whether a predetermined winning relationship exists between the first, second, and third cards. Friedman additionally discloses:

Regarding Claim 21:

- a video display (Column 2, lines 14-21 and Claim 14).
- a processor including a data structure storing data corresponding to game indicia (Column 2, lines 14-21 and Claim 14);
- means for the player to enter a wager to play at least two game hands simultaneously (Figure 2 and Claim 13);
- means for the player to prompt play of the game, said processor in response to prompting play selecting from the data structure (playing cards) and controlling the display to display at least two game indicia for each hand and an outcome indicia (exposed card) and comparing the value and other characteristic of the outcome card to each of the game indicia for each hand (Figure 2 and Claim 14);
- means for rewarding the player based upon the wager for each hand if the outcome card is determined to be one of a greater value than any same suited game cards (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Regarding Claim 22:

- means for the player to select for at least one hand at least one of the indicia of a hand for replacement, said processor programmed to select from the data structure and display a replacement indicia for the indicia selected for replacement (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Regarding Claim 23:

- said processor programmed to select from the data structure said game indicia, means for the player to select a game indicia for at least one hand for replacement and prompt play, said processor in response to prompting of play selecting from the data structure and displaying at the display a replacement indicia for the indicia selected for replacement and to select from the data structure said outcome indicia.

Regarding Claim 24:

- displaying four game indicia (split hand) (Figure 2 and Column 2, lines 50-54).

Regarding Claim 25:

- presenting for each hand an outcome indicia (exposed card) (Column 2, line 56-Column 3, line 5).

Regarding Claim 29:

- a player making a wager to play each of a plurality of game hands (Figure 2 and Column 2, lines 50-54); If a player receives two cards with the same rank, then the player can split the hand and receive two additional cards to make two separate hands.

- presenting from an inventory of at least one deck of playing cards, a plurality of game cards for each hand, each card having a value and a suit, said dealing depleting said inventory (Column 2, lines 8-10); A standard deck of fifty-two cards can be used to play the game, therefore, as cards are dealt and replaced, the inventory (remaining cards in the deck) are depleted.
- the player selecting for at least one game hand a card for replacement and replacing each selected card from and depleting the inventory of cards, no game or replacement card replicated in any game hand (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14);
- selecting and displaying from said inventory an outcome card and comparing the outcome card to the game cards of each hand, the player winning their wager if the outcome card has one of a greater or lesser value than any of the same suited game cards (Abstract, Figure 2, Column 1, lines 39-50, Column 2, line 22-Column 3, line 35, and Claims 1, 13, and 14).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-20 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friedman (U.S. 6,457,715) in view of Richardson (U.S. 5,813,673).

Friedman discloses to one having ordinary skill in the art that as discussed above regarding claims 21-25 and 29. Additionally, Friedman discloses:

Regarding Claim 2:

- presenting for each hand an outcome indicia (exposed card) (Column 2, line 56-Column 3, line 5).

Regarding Claims 5, 11, and 15:

- prior to presenting the outcome card (exposed card), the player discards and receives a replacement for at least one card (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Regarding Claims 6 and 12:

- displaying four game indicia (split hand) (Figure 2 and Column 2, lines 50-54).

Regarding Claims 16 and 20:

- a video display (Column 2, lines 14-21 and Claim 14).
- a processor including a data structure storing data corresponding to game indicia (Column 2, lines 14-21 and Claim 14);
- means for the player to enter a wager to play at least two game hands simultaneously (Figure 2 and Claim 14);
- means for the player to prompt play of the game, said processor in response to prompting play selecting from the data structure (playing cards) and controlling the display to display at least two game indicia for each hand and an outcome indicia (exposed card) and comparing the value and other characteristic of the outcome card to each of the game indicia for each hand (Figure 2 and Claim 14);

- means for rewarding the player based upon the wager for any hand if the outcome indicia is determined to be one of a pre-programmed lesser or greater value than any game indicia of the hand having the same set characteristic (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Regarding Claim 17:

- means for the player to select for at least one hand at least one of the indicia of a hand for replacement, said processor programmed to select from the data structure and display a replacement indicia for the indicia selected for replacement (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Regarding Claim 18:

- said processor programmed to select from the data structure said game indicia, means for the player to select a game indicia for at least one hand for replacement and prompt play, said processor in response to prompting of play selecting from the data structure and displaying at the display a replacement indicia for the indicia selected for replacement and to select from the data structure said outcome indicia (Column 1, lines 39-50, Column 2, lines 22-45, Column 3, lines 5-10, and Claims 1, 13, and 14).

Friedman seems to lack explicitly disclosing:

Regarding Claims 1, 9, 13, 16, and 28:

- designating the game as a high or low game.

Regarding Claims 13, 19, 26, and 27:

- each hand consists of four game cards having a value and suit.

Richardson, like Friedman, teaches of a high-low card game which is adapted to private and casino gambling. Therefore, Richardson and Friedman are analogous art. Richardson also teaches a card game using a standard fifty two card deck of four suits being played by dealing a plurality of cards to each player. Richardson teaches of an "E" card, equivalent to Friedman's "exposed card", which is dealt single face up to the dealer. The object of the game is for the players to have at least one card which is of a higher (or lower, as decided by each player before any cards are dealt) rank than the "E" card and of the same suit. However, Richardson lacks teaching of the ability for a player to play a plurality of hands. Richardson additionally teaches:

Regarding Claims 1, 9, 13, 16, and 28:

- pre-designating the game as a high or low game (Abstract and Column 3, lines 56-66).

Regarding Claims 13, 19, 26, and 27:

- each hand consists of four game cards having a value and suit (Column 4, lines 10-11 and 18-19, and Claim 2).

It would have been obvious to one having ordinary skill in the art, at the time of the applicant's invention, to modify Friedman's high-low game with the features disclosed in Richardson's high-low game. One would be motivated to do so because pre-designating a game to be a high or low game would enable the player to choose what the game they feel in that moment they will win, adding excitement to the game. Also, one would be motivated to deal four cards for each hand to each player in order to increase the odds of obtaining a winning hand making the game more fun to the players.

Terminal Disclaimer

7. The terminal disclaimer filed on April 30, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. 6,575,828 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

8. Applicant's arguments filed April 30, 2004 with regards to the rejection to claims 21-25 and 29 under 35 U.S.C. 102(e) as being anticipated by Friedman (U.S. 6,457,715) and the rejection to claims 1-20 and 26-28 under 35 U.S.C. 103(a) as being unpatentable over Friedman (U.S. 6,457,715) in view of Richardson (U.S. 5,813,673) have been fully considered but they are not persuasive.

9. Applicant traverses the rejection to claims 1-20 and 26-28 under 35 U.S.C. 103(a) as being unpatentable over Friedman (U.S. 6,457,715) in view of Richardson (U.S. 5,813,673). Applicant alleges the examiner has not established a prima facie case of obviousness because the prior art references, when combined, do not teach or suggest all the claim limitations. In particular, Applicant alleges Friedman does not disclose a player wagering and playing at least two hands. The examiner respectfully disagrees. Friedman discloses this feature at least in figure 2 and claim 13. A player is allowed to split the hand and play two hands simultaneously in the game. Therefore, for the reasons discussed above, the examiner maintains the combination of Friedman and Richardson, when taken as a whole, renders the claimed invention obvious.

10. Furthermore, Applicant alleges Friedman does not disclose a game where a player needs to have a card of the same suit as the outcome card but the card must be designated one of a

higher or lower rank. However, the examiner respectfully disagrees. The examiner asserts Friedmans's disclosure and broad claim language to, "determining if the one or both of the one or two pairs of remaining cards and the exposed additional card have a predetermined winning relationship." fully encompasses the instant claim limitation. Therefore, for the reasons discussed above, the examiner maintains the combination of Friedman and Richardson, when taken as a whole, renders the claimed invention obvious.

11. Applicant alleges claims 2-15 are allowable because they depend directly or indirectly from claim 1. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

12. Applicant alleges claim 16 is allowable for the same reasons presented for claim 1. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

13. Applicant alleges claims 17-20 are allowable because they depend directly or indirectly from claim 16. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

14. Applicant alleges claim 26 is allowable for the same reasons presented for claim 1. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

15. Applicant alleges claim 27 is allowable for the same reasons presented for claim 1. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

16. Applicant alleges claim 28 is allowable for the same reasons presented for claims 26 and 27. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

17. Applicant traverses the rejection to claims 21-25 and 29 under 35 U.S.C. 102(e) as being anticipated by Friedman (U.S. 6,457,715). Applicant alleges Friedman does not disclose or

suggest the play of multiple hands or the determination of when a player is entitled to an award. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

18. Applicant alleges claims 22-25 are allowable because they depend directly or indirectly from claim 21. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

19. Applicant alleges claim 29 is allowable for the same reasons presented for claim 21. However, the examiner respectfully disagrees. Please see the response in item No. 10 above.

20. For the reasons stated hereinabove, the examiner maintains the art rejections as presented in Office Action, Paper No. 7.

21. Applicant's arguments, see pages 2 and 12, filed April 30, 2004, with respect to the objection to the drawings have been fully considered and are persuasive. The objection of the drawings has been withdrawn because Applicant amended the specification to include the proper reference numeral.

22. Applicant's arguments, see pages 2, 3, and 12 filed April 30, 2004, with respect to the objection to the specification have been fully considered and are persuasive. The objection of the specification has been withdrawn.

23. Applicant's arguments, see pages 11, 12, and 21, filed April 30, 2004, with respect to the objection to claim 29 has been fully considered and is persuasive. The objection to claim 29 has been withdrawn.

24. Applicant's arguments, see pages 4-7 and 12, filed April 30, 2004, with respect to the rejection to claims 1-20 and 28 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been fully considered and is persuasive because

Applicant amends the claims. The rejection of claims 1-20 and 28 under 35 U.S.C. 112, first paragraph has been withdrawn.

25. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (703) 308-7133. The examiner can normally be reached on Monday - Thursday, 6:30 A.M. - 5:00 P.M..

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEJ

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JOHN M. HOTALING, II
PRIMARY EXAMINER